

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BROOKLYN BOTTLING OF MILTON,
NEW YORK, INC., : C.A. No. 07 CIV 08483 (AKH)

Plaintiff, :

X :

:

:

:

:

-against- :

AFFIDAVIT

ECUABEVERAGE, CORP. :

Defendant. :

X

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

Carlos Diaz, being duly sworn, deposes and says under the penalty of perjury.

1. I am the Manager for North Shore Bottling Company.
2. I am not a party to the above captioned action.
3. I am not an employee of either the plaintiff or defendant although I am employed by a beverage corporation owned by the Chief Executive Officer of Plaintiff, Eric S. Miller.
4. I have not been paid to make this affidavit and I do not have a financial interest in the outcome of this case.
5. I am familiar with the plaintiff's beverage TROPICAL PURO SABOR NACIONAL.
6. I am familiar with the name and the design of the can, the bottle, and/or the box that accompanies the case
7. I am also familiar with the defendant's company as a competitor of Plaintiff in the market for Ecuadoran flavored beverages.

8. I am fully familiar with Plaintiff's 12 fl. oz., beverage can and Defendant's 12 fl. oz.,

beverage can and 2 liter bottle contained in the photo which is marked as Exhibits A and attached to the affidavit of Eric Miller,

9. I have seen actual bottles, cans and/or packages containing defendant's beverages.

10. On the strawberry flavored beverage, the colors of the word TROPICAL on both plaintiff's and defendant's can or bottles are a very similar shade of blue

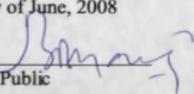
11. The use of the words Tropical Puro Sabor Nacional on one's version and Tropical Puro Sabor Ecuatoriana are predominant. The origin of the flavor is from Ecuador.

12. As a manager for a beverage bottler and distributor, I have had the opportunity to speak with wholesalers and numerous consumers.

13. A number of consumers have told me that they believed that defendant's beverage cans or bottles were a variation, a different version, or new packaging of Plaintiff's brand of Ecuadorian beverages.

Carlos Diaz

Sworn to before me this
17th day of June, 2008


Notary Public

BHARAT KANJLIA
NOTARY PUBLIC OF NEW JERSEY
I.D. NO. 2216119
COMMISSION EXPIRES JULY, 2008